

Christina N. Goodrich (SBN 261722)  
christina.goodrich@klgates.com  
Cassidy T. Young (SBN 342891)  
cassidy.young@klgates.com  
K&L GATES LLP  
10100 Santa Monica Boulevard  
Eighth Floor  
Los Angeles, CA 90067  
Telephone: +1 310 552 5000  
Facsimile: +1 310 552 5001  
  
(additional counsel listed  
on signature page)

*Attorneys for Plaintiff  
Entropic Communications, LLC*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ENTROPIC COMMUNICATIONS, LLC,  
Plaintiff,  
v.  
COX COMMUNICATIONS, INC., *et al.*,  
Defendants.

Case No.: 2:23-cv-01049-JWH-KES  
(Lead Case)

Case No.: 2:23-cv-01050-JWH-KES  
(Related Case)

[Assigned to the Honorable John W. Holcomb]

ENTROPIC COMMUNICATIONS, LLC,  
Plaintiff,  
v.  
COMCAST CORPORATION, *et al.*,  
Defendants.

**PLAINTIFF ENTROPIC  
COMMUNICATIONS, LLC'S  
REPLY BRIEF IN SUPPORT OF  
MOTION FOR  
RECONSIDERATION OF  
COURT'S ORDER ON  
COMCAST'S MOTION TO  
DISMISS [DE 120] PURSUANT  
TO LOCAL RULE 7-18**

Hearing Date: January 5, 2024  
Hearing Time: 9:00 a.m.  
Courtroom: 9D (Santa Ana)

1 Plaintiff<sup>1</sup> respectfully submits this Reply Brief in support of its Motion for  
 2 Reconsideration pursuant to Local Rule 7-18 (the “Motion”).

3 **I. INTRODUCTION**

4 Comcast’s Opposition relies on the mistaken assumption that the Court  
 5 considered the *Air Prod. & Chemicals* line of cases<sup>2</sup> simply because they were included  
 6 in the Parties’ supplemental briefing, notwithstanding the fact that the Court did not  
 7 mention, analyze, or distinguish them in its Order—after specifically requesting for the  
 8 Parties to submit briefing relating to the same. Comcast asserts that perhaps the Court  
 9 merely “did not adopt the case law”, *see DE* 137 (the “Opp.”) at 9:7–8; however, *even if*  
 10 the Court ultimately rejected Plaintiff’s position regarding the *Air Prod. & Chemicals*  
 11 authority, the Court’s Order does not explain why this binding precedent does not apply.  
 12 The Court’s final Order is substantively identical to its Tentative Ruling issued prior to  
 13 the Parties’ oral argument and supplemental briefing, *see DE* 120; thus, it appears that  
 14 the Court may have inadvertently overlooked the *Air Prod. & Chemicals* line of cases—  
 15 which forms the basis for Entropic’s Motion. Because reconsideration will clarify the  
 16 Court’s Order, further the interests of efficiency, and conserve judicial resources, *see DE*  
 17 125 at Sec. IV.C, this Court should reconsider its Order to address the Parties’  
 18 briefing and arguments relating to the *Air Prod. & Chemicals* line of cases. Without  
 19 reconsideration, the Federal Circuit will be left to guess how this binding precedent was  
 20 interpreted and could result in a remand for further proceedings to provide insight into  
 21 the Court’s analysis of this precedent.

22

---

23 <sup>1</sup> The following definitions are used in this brief: Plaintiff Entropic Communications,  
 24 LLC (“Entropic” or “Plaintiff”); Defendants Comcast Cable Communications  
 25 Management, LLC; Comcast Corporation; and Comcast Cable Communications, LLC  
 (collectively, “Comcast” or “Defendants”).

26 <sup>2</sup> The “*Air Prod. & Chemicals* line of cases” collectively refers to the following: *Air*  
 27 *Prod. & Chemicals, Inc. v. Reichhold Chemicals, Inc.*, 755 F.2d 1559 (Fed. Cir. 1985);  
*Cooper Notification, Inc. v. Twitter, Inc.*, 545 F. App’x 959 (Fed. Cir. 2013); *Highway*  
*Equip. Co., Inc. v. FECO, Ltd.*, 469 F.3d 1027 (Fed. Cir. 2006); *Pixton v. B & B Plastics,*  
*Inc.*, 291 F.3d 1324 (Fed. Cir. 2002); *Applied Biosystems Group v. Illumina, Inc.*, 282  
 28 F. Supp. 2d 1120 (N.D. Cal. 2003); and *Kunkel v. Topmaster Int’l, Inc.*, 906 F.2d 693  
 (Fed. Cir. 1990).

1       **II. ARGUMENT**

2       **A. The Court did not analyze the *Air Prod. & Chemicals* line of cases or**  
 3       **the Parties' supplemental briefs.**

4       Comcast asserts that the Court considered but failed to “adopt the [*Air Prod. &*  
 5       *Chemicals*] case law” after (1) noting that the issue of standing was “an ‘important’ one  
 6       that it ‘need[ed] to get right’”; (2) hearing “Entropic’s legal arguments and cases that  
 7       were presented at length at the hearing, in a slide deck filed with the Court”; and (3)  
 8       reviewing “supplemental briefing specifically permitted by the Court”. Opp. at 9:7–17.  
 9       Comcast’s assertion actually proves Entropic’s point: The Court considered the Parties’  
 10      initial briefs, *see* DE 120 at 3 n.8, and analyzed the cases cited therein, *see, e.g., id.* at  
 11      9–10. The Order also addressed, in detail, the VSA and Entropic’s willfulness  
 12      allegations. *See* DE 120 at 5–11. Absent from the Court’s Order, however, is any  
 13      mention or discussion of the *Air Prod. & Chemicals* line of cases that “were presented  
 14      at length at the hearing” or the Parties’ supplemental briefing “specifically permitted by  
 15      the Court.” *See* Opp. at 9:14–16. Given that the Court thoroughly and meticulously  
 16      addressed the issues set forth in the Parties’ initial briefing, it is implausible that the  
 17      Court reviewed, analyzed, and rejected Plaintiff’s arguments based on the *Air Prod. &*  
 18      *Chemicals* line of cases without any mention of the same in its Order. *See generally*  
 19      DE 120. This is especially true where, as is the case here, the *Air Prod. & Chemicals*  
 20      line of cases are precedential and binding on this Court.<sup>3</sup> *See Preminger*, 517 F.3d at  
 21      1309 (“A prior precedential decision on a point of law by a panel of this court is binding  
 22      precedent and ***cannot be overruled or avoided*** unless or until the court sits en banc.”)  
 23      (emphasis added).

24       Further, the cases that Comcast cites in support are inapposite. For example, in  
 25      *Garcia v. Shasta Beverages, Inc.*, the plaintiff sought for the court to reconsider its  
 26

---

27      <sup>3</sup> Notably absent from Comcast’s Opposition is any denial that the *Air Prod. &*  
 28      *Chemicals* line of cases are precedential. *See generally* Opp. This is not surprising  
      given that it cannot be disputed that Federal Circuit authority binds this Court.  
*Preminger v. Sec’y of Veterans Affs.*, 517 F.3d 1299, 1309 (Fed. Cir. 2008).

denial of class certification based on, *inter alia*, failure to consider several material facts concerning the defendants' employment policies that were previously submitted to the Court in plaintiff's original motion for class certification. No. 2:19-cv-07798-JWH-AFMx, 2021 WL 1502917, at \*4 (C.D. Cal. Feb. 25, 2021). The Court explained that the plaintiff's "sole argument" was that the Court failed to "analyze explicitly every argument and piece of evidence that Garcia submitted . . ." *Id.* Entropic's position, however, is that the Court failed to consider *Federal Circuit binding case law*, not merely facts already presented to the Court. Furthermore, the Court in *Garcia* also declined to reconsider the class certification order because the case was *transferred* from another Judge, and reconsideration would result in the Court conducting a *post hoc* review of the prior Judge's reasoning and considerations. See *Garcia*, 2021 WL 1502917, at \*4 ("It would be improper for this Court to conduct a *post hoc* examination of Judge Anderson's reasoning and conclusions regarding the sufficiency of the arguments and evidence that were presented in connection with the Original Motion."). The same consideration is not present here.

Comcast's reliance on *Safari v. Whole Foods Market, Inc.* is equally misplaced. In that case, the plaintiff argued that the Court did not "sufficiently consider [an] unpublished decision" as well as an inapposite decision that plaintiff brought to the court's attention via "a Notice of Supplemental Authority a week before the Court issued its Order"—not that the Court wholly neglected to analyze a line of precedential decisions and their impact on the matter at issue despite requesting and receiving supplemental briefing to address them. No. 8:22-cv-01562-JWH-KES, 2023 WL 8269774, at \*3 (C.D. Cal. Oct. 10, 2023). Because this Court did not mention, much less analyze, the *Air Prod. & Chemicals* line of cases, this Court should reconsider its Order granting Comcast's motion to dismiss.

#### **B. The Court has inherent authority to correct its Order.**

Comcast suggests that the Court should simply ignore Entropic's request for reconsideration of clear legal error, arguing that *even if* any legal error had been

1 committed, “there is no such ground to reconsider an interlocutory order in this  
 2 District.” Opp. at 11:1–3. Not so. Comcast’s strict application of the text of Local  
 3 Rule 7-18 would lead to absurd results—the Court would be forced to ignore legal errors  
 4 and lack any ability to correct them. The Court may use its inherent authority to  
 5 reconsider interlocutory rulings or interpret Local Rule 7-18 to apply to reconsideration  
 6 of clear legal error.

7 This Court has broad inherent authority to correct its interlocutory decisions, and  
 8 is not required to turn a blind eye to clear legal error when such an error is identified.  
 9 *see City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885  
 10 (9th Cir. 2001) (explaining that “a district court . . . possesses the inherent procedural  
 11 power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be  
 12 sufficient.”); *see also Classical Silk, Inc. v. Dolan Grp., Inc.*, 2016 WL 7637668, at \*8  
 13 n.2 (C.D. Cal. Mar. 1, 2016) (collecting cases and explaining that courts within this  
 14 District “have concluded that justice is best served by entertaining motions for  
 15 reconsideration based on a perceived error of law to ensure that the court’s prior order  
 16 is not ‘infected with error’”); *Thomas v. Hous. Auth. of Cty. of Los Angeles*, 2005 WL  
 17 6136322, at \*4 (C.D. Cal. Sept. 19, 2005) (explaining that courts have “inherent  
 18 authority to reconsider interlocutory rulings at any time prior to final judgment.”).

19 For example, in *Merlo v. Wilkie*, this Court considered a motion for  
 20 reconsideration despite finding that neither Rule 59(e) nor Local Rule 7-18 “provides a  
 21 basis for reconsideration.” No. 2-19-CV-05078-ODW-JCX, 2020 WL 5042776, at \*5  
 22 (C.D. Cal. Aug. 25, 2020). Specifically, this Court stated that “as the [order at issue] is  
 23 not a final order, the Court has inherent authority to modify it for sufficient cause.  
 24 Therefore, the Court will consider whether either dismissal or reconsideration is  
 25 appropriate.” *Id.* The *Merlo* Court specifically found reconsideration appropriate to  
 26 correct legal error where the Court previously denied the defendant’s motion to strike  
 27 the plaintiff’s jury demand, but failed to consider a “Supreme Court [case that] held  
 28 there is no right to a jury trial for [these] claims against the federal government.” *Id.* at

1       \*6. After acknowledging its error, the Court ultimately granted reconsideration and  
 2 struck the plaintiff's jury demand. *See id.* The same basis exists here.

3       Similarly, this Court has broad discretion in interpreting and applying its own  
 4 Local Rules such that it could indeed grant reconsideration pursuant to Local Rule 7-  
 5 18. *See Reyes v. Marshalls of CA, LLC*, No. 2:22-cv-01245-ODW (ASx), 2022 WL  
 6 2753520, at \*3 (C.D. Cal. Jul. 14, 2022) ("[B]road deference is given to a district court's  
 7 interpretation of its local rules."); *Green v. Baca*, 306 F. Supp.2d 903 (C.D. Cal. 2004)  
 8 ("The court . . . has broad discretion in the application of the local rules"). This is true  
 9 regardless of whether Rules 59 or 60 specifically apply here as "Courts in this district  
 10 have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." *Lira*  
 11 *v. Nat'l Distrib. Ctrs., LLC*, No. 5:21-cv-00672-JGB-kk, 2023 WL 8053857, at \*2, 7  
 12 (C.D. Cal. Apr. 19, 2023) (citation omitted) (granting motion for reconsideration where  
 13 court's prior order did not consider binding case law nor a material agreement).

14       Accordingly, this Court undoubtedly has the power to reconsider its order on  
 15 Comcast's motion to dismiss. As the Ninth Circuit explained in *Smith v. Clark County*,  
 16 "[i]t is common for both trial and appellate courts to reconsider and change positions  
 17 when they conclude that they made a mistake. This is routine in judging, and there is  
 18 nothing odd or improper about it. A trial court may reconsider and reach a conclusion  
 19 contrary to an earlier decision, and a paradigmatic example of when this should be done  
 20 is when the court made its prior decision without considering the legal standards in a  
 21 controlling opinion . . ." 727 F.3d 950, 955 (9th Cir. 2013).

22       **C. Comcast is not entitled to sanctions.**

23       In its Opposition, Comcast baldly asserts that it is entitled to sanctions, and claims  
 24 that Entropic violated Local Rule 7-18 by rearguing its position and failing to meet and  
 25 confer. This Court should reject Comcast's claims.

26       First, Comcast misunderstands the difference between *directing the Court* to the  
 27 cases and arguments that Entropic asserts that the Court overlooked, and rearguing those  
 28

1 points. Entropic's Motion clearly did the former.<sup>4</sup> Neither Party disputes that Entropic  
 2 directed the Court to the same excerpts from *Air Products* in its Motion and did not  
 3 present any "material information . . . that diverts from Entropic's oral argument and  
 4 supplemental briefing." *See Opp.* at 13:1–7. Moreover, Entropic's discussion on the  
 5 amorphous provisions of the VSA only highlights to the Court the inconsistencies  
 6 present in the Order that Entropic seeks to have the Court clarify. *See DE 125* at 10:2–  
 7 11. Accordingly, Entropic did not rehash its prior arguments, and instead directed the  
 8 Court's attention to the arguments and authority that Entropic asserts the Court may  
 9 have inadvertently overlooked prior to entering its Order.<sup>5</sup>

10 Second, as Entropic previewed in its Motion (and which Comcast has not  
 11 disputed), Comcast has suffered no prejudice as a result of the minimal delay in  
 12 conferring, and indeed rejected Entropic's offer to request to file its Motion beyond the  
 13 applicable deadline to give Comcast enough time to consider Entropic's position. *See*  
 14 *DE 125-1*, Young Decl. ¶ 7 ("Comcast's counsel (Mr. Padmanabhan) declined the offer  
 15 [to request an extension of time to file] and stated that additional time for consideration  
 16 was not necessary. Indeed, he confirmed that the additional time would not change  
 17 Comcast's position, which was to oppose the Motion."); *see also Reyes*, 2022 WL  
 18 2753520 at \*3 ("[T]he Court will not disregard [Plaintiff's] Motion merely because  
 19 counsel's meet-and-confer efforts did not technically comply with Local Rule 7-3.");  
 20 *see also Green*, 306 F. Supp. at 913 n.40 ("Because there is no indication that plaintiff

---

21  
 22 <sup>4</sup> While Entropic certainly did not reargue its claims in its Motion, the same cannot be  
 23 said for Comcast. Indeed, Comcast uses its Opposition to rehash prior arguments  
 24 relating to the *Air Prod. & Chemicals* line of cases. *See, e.g.*, *Opp.* at 13:27, 14:1–2  
 25 (arguing that "[u]nless Entropic is able to plausibly allege willfulness on a patent-by-  
 26 patent basis, the law of the case will require dismissal of Entropic's claims for lack of  
 27 constitutional standing"); *see also id.* at 14:2–6 (arguing that "[t]he *Air Products* case  
 28 and the other authority that Entropic claims [are] 'dispositive' of the issues in Comcast's  
 Motion to Dismiss address whether the cases arise under the patent laws for purposes  
 of determining whether the district court has federal question jurisdiction under  
 U.S.C. § 1338—not whether a party has constitutional standing to bring suit.").

29 <sup>5</sup> Comcast grossly misrepresents the Parties' conferral in its Opposition. During the  
 30 meeting, Entropic informed Comcast that it did *not* intend to "'repeat[]'" already  
 31 presented arguments," and that Entropic would not (and in fact did not) violate Local  
 32 Rule 7-18's prohibition regarding the same. *But see Opp.* at 13:7–10.

1 was prejudiced by the one-day late filing, the court exercises its discretion to consider  
2 the declaration"). Sanctions, therefore, are not warranted.

3 **III. CONCLUSION**

4 In light of the foregoing, Entropic respectfully requests this Court grant  
5 Entropic's Motion, and reconsider its Order on Comcast's Motion to Dismiss.

6 Dated: December 22, 2023

7 Respectfully submitted,

8 By: /s/ Cassidy T. Young

9 Christina Goodrich (SBN 261722)  
christina.goodrich@klgates.com  
10 Connor J. Meggs (SBN 336159)  
connor.meggs@klgates.com  
11 Cassidy T. Young (SBN 342891)  
cassidy.young@klgates.com  
12 Kelsi E. Robinson (SBN 347066)  
kelsi.robinson@klgates.com  
13 K&L GATES LLP  
14 10100 Santa Monica Boulevard  
Eighth Floor  
Los Angeles, CA 90067  
Telephone: +1 310 552 5000  
15 Facsimile: +1 310 552 5001

16 James A. Shimota (*admitted pro hac vice*)  
jim.shimota@klgates.com  
17 George C. Summerfield (*admitted pro hac vice*)  
george.summerfield@klgates.com  
18 K&L GATES LLP  
19 Suite 3300  
20 70 W. Madison Street  
Chicago, IL 60602  
21 Tel.: (312) 372-1121  
Facsimile: (312) 827-8000

22 Peter E. Soskin (SBN 280347)  
peter.soskin@klgates.com  
23 K&L GATES LLP  
24 Four Embarcadero Center, Suite 1200  
San Francisco, CA 94111  
25 Telephone: (415) 882-8200  
Facsimile: (415) 882-8220

27 Darlene F. Ghavimi (*admitted pro hac vice*)  
darlene.ghavimi@klgates.com  
28 K&L GATES LLP

2801 Via Fortuna, Suite #350  
Austin, TX 78746  
Telephone: (512) 482-6800  
Facsimile: (512) 482-6859

*Attorneys for Plaintiff  
Entropic Communications, LLC*

## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiff Entropic Communications, LCC, certifies that this brief contains 2,342 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 22, 2023

Respectfully submitted,

By: /s/ *Cassidy T. Young*

Christina Goodrich (SBN 261722)  
christina.goodrich@klgates.com  
Connor J. Meggs (SBN 336159)  
connor.meggs@klgates.com  
Cassidy T. Young (SBN 342891)  
cassidy.young@klgates.com  
Kelsi E. Robinson (SBN 347066)  
kelsi.robinson@klgates.com  
K&L GATES LLP  
10100 Santa Monica Boulevard  
Eighth Floor  
Los Angeles, CA 90067  
Telephone: +1 310 552 5000  
Facsimile: +1 310 552 5001

James A. Shimota (*admitted pro hac vice*)  
jim.shimota@klgates.com

George C. Summerfield (*admitted pro hac vice*)

[george.summerfield@klgates.com](mailto:george.summerfield@klgates.com)

K&L GATES LLP

## Suite 3300

70 W. Madison Street  
Chicago, Illinois

Chicago, IL 60602  
Tel. (312) 352-1111

Tel.: (312) 372-1121

Faksimile: (312) 827-8000

Peter E. Soskin (SBN 280347)

peter.soskin@klgates.com

K&L GATES LLP

Four Embarcadero Center, Suite 1200

San Francisco, CA 94111

Telephone: (415) 882-8200

Facsimile: (415) 882-8220

Darlene F. Ghavimi (*admitted pro hac vice*)

[darlene.ghavimi@klgates.com](mailto:darlene.ghavimi@klgates.com)

K&L GATES LLP

2801 Via Fortuna, Suite #350  
Austin, TX 78746  
Telephone: (512) 482-6800  
Facsimile: (512) 482-6859

*Attorneys for Plaintiff  
Entropic Communications, LLC*